

RENUMBERED

FROM

NO. 026

TO

NO. 029

SOURCE:

CASE DOCKETS OF FAR EAST WAR CRIMES TRIALS

RECORD GROUP 153

ENTRY 1021

BOX 0001

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

Yokohama, Japan
21 June 1946
Case No. 26

UNITED STATES OF AMERICA VS RYOICHI SHIMODE

Review of the Staff Judge Advocate

1. The attached record of trial of Ryoichi Shimode at Yokohama, Japan from 29 April 1946 to 2 May 1946, by a Military Commission appointed by paragraph 28, Special Orders No. 107, Headquarters Eighth Army, United States Army, dated 24 April 1946, having been referred to the Staff Judge Advocate for review, is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Ryoichi Shimode
AGE: Thirty-one (31)
RESIDENCE: Gifu Prefecture, Yoshiki Gun, Funatsu Machi, 1221.
MARITAL STATUS: Married, two children
RELATIVES: Father
EDUCATION: Graduated from the higher elementary school.
VOCATION: Worked in Father's hardware store
MILITARY SERVICE: Joined the Japanese Army the 26th of February 1937 and sent to Manchuria. Wounded in June 1939 and discharged in Osaka. Redrafted on 21 June 1944 to March 1945.

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: In violation of the Laws and Customs of War between 1 May 1944 and 15 August 1945, at Nagoya Area Prisoner of War Camp No. 1, Kamioka, Honshu, Japan, willfully and unlawfully commit cruel, inhuman and brutal atrocities and other offenses against numerous American Prisoners of War.	NG	G, Except the words, "1 May 1944", substituting therefor the words, "6 April 1945", of the excepted words, Not Guilty, of the substituted words, G.	Yes
Sp 1: In October 1944, did willfully mistreat and torture Corporal Elvin Lee McGowan, an American P. W.		Nolle pros	
Sp 2: About June 1945, mistreat and torture Private First Class Robert L. Robinson, an American PW.	NG	G	Yes
Sp 3: In July or August 1945, mistreat and torture Private First Class James E. Mock, an American PW.	NG	G	Yes
Sp 4: In May or June 1945, mistreat and torture sixteen (16) American PWs.	NG	NG	
Sp 5: Between 1 May 1944 and 15 August 1945, mistreat and torture Machinist Mate Second Class Morris D. Swisher, Private Vernon G. Huff, Private First Class James	NG	G, Except the words "1 May 1944", substituting therefor the words, "6 April 1945"	Yes

T. Fite, and numerous other American Prisoners of War. Mistreat and torture Private Jack Warren, Private Robert L. De Volt, and other American PWs.

and except of the words, "and burning them with an ignited substance", of the excepted words, Not Guilty, of the substituted words, Guilty.

Sentence Imposed: Hard labor for twenty (20) years.

Maximum Punishment: Death by hanging.

3. Scope of the Review:

The accused was a civilian guard at the Nagoya Area Prisoner of War Camp No. 1, located at Kamioka, Honshu, Japan, between 6 April 1945 and 15 August 1945. He was tried on 4 Specifications, (a nolle pros having been entered on Specification 1), all laid under the charge of willfully and unlawfully committing offenses against numerous American Prisoners of War, in violation of the Laws and Customs of War. Only those specifications of which he was adjudged guilty will be taken up for consideration in this review.

The accused was found guilty of beating Private First Class Robert L. Robinson into unconsciousness, then reviving him and again beating him. This occurred in or about the month of June 1945, (Sp 2); of brutally beating Private First Class James E. Mock, in or about the months of July or August 1945 (Sp 3); of unlawfully mistreating and torturing Machinist Mate Second Class Morris D. Swisher, Private Vernon G. Huff, Private First Class James T. Fite, Private Jack Warren, Private Robert L. De Volt and numerous other American Prisoners of War by brutally beating them between 6 April 1945 and 15 August 1945 (Sp 5).

4. Summary of Evidence:

a. For the Prosecution:

As to Specification 2: In or about the month of June 1945 at Prisoner of War Camp No. 1 at Kamioka, Japan, Private First Class Robinson was beaten with fists, clubs, sword sheathes, and leather belts, on the face, head, shoulders, back, arms, legs, sides, buttocks, groin and shins for about twenty minutes, at which time he became unconscious and fell to the ground. While in this position he was kicked in the stomach, back and sides. Water was then thrown upon him to revive him. At this point he was lifted from the ground, his hands were tied to a ladder to hold him erect and he was beaten again for about ten minutes. He was so punished for trading a shirt with a Korean. Of the guards who perpetrated the above offense the accused was "the most vicious and sadistic" (Exs. 1-7, 20).

As to Specification 3: In the month of July or August 1945 the accused, together with other guards, beat Private First Class James E. Mock on the face, kidney, groin and shins with long blackjacks, practice guns and a rubber hose. This beating caused severe bruises on his face, back and legs and caused him to become unrecognizable (Exs. 3, 10, 11, 12, 28).

As to Specification 5: During the period between 6 April 1945 and 15 August 1945 the accused, together with other guards, beat and tortured American Prisoners Swisher, Huff, Fite, Warren, De Volt and many other American prisoners. De Volt was beaten and clubbed over the head and on the face. As a result he was in a state of total amnesia for over a week. The whole camp was punished for one prisoner's infractions of the rules. Beatings were administered by a club carved like a sword and by a piece of automobile tire. One prisoner's eardrums were broken by the beatings. Fite was beaten with clubs, belts and other instruments on many occasions. One of the beatings resulted in the breaking of his nose, another caused broken teeth and another fractured his hand. Warren's arm was broken in the beating given to him.

The common practice was to beat prisoners to unconsciousness, revive them and beat them again, for the taking of a few beans, buying of tobacco and for other such trivialities. Collective punishment was often given to the entire camp upon the slightest provocation (Exs. 3, 4, 6, 9, 16-19, 21-23, 25-27, 29, 30).

b. For the Defense:

At the beginning of the case for the defense, Defense Exhibits A to I were introduced into evidence. Only those which support specifications upon which the accused was found guilty are here considered. Exhibit A is an extract from the Japanese Army service record of the accused, which purported to show that he was in the hospital during a part of the period he was charged with being on duty at the camp on the charge and in Specification 5. This was supported by Exhibit B which is a roster of personnel in the camp that shows the dates of their employment. Exhibit C shows no prisoner in the camp by the name of Robertson; however, Robinson's name is there listed. (Robertson is the name used in prosecution Exhibits 5 and 6). Exhibit E states that one Nakasai was the guard who beat De Volt. Exhibits F and G do not mention the accused by name. Exhibit H makes no mention of the name of the accused is describing Mock's beating, while Exhibit I uses the name Robertson as a victim of the beatings and does not name the accused (R. 22-24).

The defense called as its first witness Sodohichiro Shimode, father of the accused, who testified that when the accused visited him in the daytime it was his custom to bring three or four prisoners with him. At one time when they came he was making bread and the accused had him make enough so each prisoner could have a piece. The witness identified the picture of L.V. Lucky (Def. Ex. J) as one who came to visit with the accused (R. 24-25).

The defense presented the testimony of Yoshio Uyeda who testified that he was a policeman in Gifu city and that the Kamioka Camp was in his area. He knew the accused since November 1940, and used to buy articles for the police department at the hardware store in which the accused worked. His general reputation for "simplicity" and truthfulness was good, and he did not hear, at any time, statements from accused's friends or acquaintances that he was belligerent. Whenever he saw the accused with prisoners of war he was unarmed. After the cessation of hostilities he went to the camp and saw the accused talking and playing with the prisoners (R. 26-29).

The next witness called by the defense was Masozuo Matsuda who testified that he was Assistant Secretary of the Farm Association of Gifu Prefecture. He had known the accused for eleven years. In May 1945, during a visit at the home of the accused, he saw four or five prisoners eating a meal there. The witness identified the prisoner in the picture (Def. Ex. j - picture of Lucky), as one who was present at the time. Accused's reputation for honesty among these who knew him was good, and he was diligent and loyal to those whom he served. At no time did the witness hear any of accused's acquaintances mention that he was of a vicious nature. On one occasion the accused came to the witness' office and said the prisoners needed food. He offered to trade tools for the same. The food was given to him and when the camp finance office paid the association for it, a check for the tools was sent to the father of the accused. Later he bartered for medical supplies and vitamin pills for the camp (R. 30-33).

Yoshio Obora, the next witness for the defense, testified that he formerly was a guard at the camp. (The only beatings he saw had to do with those charged in a specification of which the accused was found not guilty and are not herein considered). He had known the accused since their school days. The accused gave the prisoners his share of tobacco and treated them kindly. When the weather was warm he often took them swimming. The accused and Lucky became intimate friends and the other guards were envious of this friendship (R. 35-39).

The accused was advised of his rights and elected to be sworn and to be a witness in his own behalf. He testified that he had a wife and two children. He graduated from the elementary school. On 6 April 1945 he went to

work at the camp. His job was to take care of the clothing supply. In June 1945 he slapped a prisoner two or three times and hit him across the buttocks with a bamboo pole because the prisoner lied to him. He failed to remember Robinson, Mock, Fite or De Volt, nor did he remember an incident of a prisoner being punished for trading a shirt to a Korean. He recalled that in June 1945 a Prisoner of war was discovered stealing food from a warehouse. At that time Lieutenant Goldsmith asked permission to administer the punishment. When this was granted he doubled up his fist and cursed the prisoner while Sergeant Pase struck the prisoner with his fist and knocked him to the floor. The Lieutenant called Lucky who also beat the prisoner. The other Japanese guards left and the accused persuaded the Americans to cease beating him. The prisoner was then taken to the office of the guards where the accused was ordered by Furushima, (the Camp Commandant), to strike the prisoner and he complied by slapping him three times. When they went outside Furushima ordered him to pour water on the prisoner and he again complied with the order. The prisoners clothes were removed for drying purposes and he was placed in the guard house. In September 1945 the accused was sentenced to confinement in the guard house for the slapping of prisoners above set forth. The sentence was never executed. Accused identified the picture of Lucky (Def Ex J) and stated that they exchanged pictures. The clippers (Def Ex K) were presented to him by Lieutenant Goldsmith with a written notation that they were given to him in appreciation of his interests in the welfare of prisoners (R. 39-56).

5. Opinion

The record is legally sufficient to sustain the findings of the commission. The commission was constituted by proper authority and had jurisdiction over the accused and of the offenses. The prosecution introduced testimony by affidavits by American internees at the camp who were in a position to know the facts. From such testimony the guilt of the accused was well established.

Witnesses for the accused testified as to his general reputation and that he was kind to the prisoners and often went beyond his duty to secure food and medical supplies for them. The commission however, chose, in evaluating the evidence, to find in favor of the prosecution.

The accused admitted slapping a prisoner and hitting him across the buttocks with a bamboo stick. Also, he admitted that, on orders of the camp commandant, he slapped three others and poured water over one of them.

The defense made a motion to strike the words of Specification 5, "numerous other American Prisoners of War", on the grounds that it could be the same persons as the "sixteen (16) American Prisoners of War" in Specification 4, and the accused then would be tried on two specifications, the essence of the statement that the commission would take into consideration, the substance of the statement of the defense in support of the motion as the case unfolded and evidence was introduced. Had there been any error in this decision it would have been cured by the finding of Not Guilty of Specification 4.

The defense objected to the introduction of ex parte affidavits into evidence and was properly overruled. Such evidence is expressly admissible under paragraph 5(d) (1) (c) SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945. This SCAP rule is legal and in accordance with established practice in Military Commission Trials. Application of Yamashita 66 S Ct. 340; Ex Parte Quirin 317 U. S. 1, 63 S Ct. 2; Fairman, The Law of Martial Rule P 276, 277.

The defense's objection to certain words in the affidavits allegedly amounting to conclusions on the part of the witnesses who were not qualified to give such opinions, was properly overruled. The above cited SCAP regulation provides that such evidence as in the commission's opinion would have probative nature in the mind of a reasonable man may be admitted into evidence.

There are conflicts in the times and dates given in the affidavits in support of Specification 3. This could well have been considered by the commission as having been caused by the state of the minds and memories of Prisoners of War in captivity. There is, however, a corroboration of the events that well support the accusations of the Specification.

A careful scrutiny of the entire record fails to reveal any error which affected the substantial rights of the accused, or any failure to accord him a fair trial in every respect. The evidence supports the findings. There is no evidence that the accused was not sane at the time the alleged acts were committed and at the time of trial.

6. Recommendations

There was a letter of clemency from the wife of the accused which has been read and duly considered. Likewise, there was a letter from Mazumi Toyobashi who stated that the accused was "a cruel natured person since childhood". This letter in no way affects the recommendation of this reviewer in the matter of clemency.

The commission sentenced the accused to confinement at hard labor for twenty years. The sentence is legal.

The record shows nothing which would sufficiently indicate that clemency should be extended to the accused. The accused testified that he had been given a pair of clippers by Lieutenant Goldsmith for his kindness to the prisoners. This was substantiated by a signed statement by the Lieutenant (Def Ex K) (R 53). After the present trial had ended an affidavit was received from the Lieutenant. This affidavit, though not in evidence in the record, may be considered by the reviewing authority in the consideration of the matter of clemency only. The statements in the affidavit strongly tend to indicate that, in addition to the other crimes of which he has been found guilty, the accused has added thereto the crime of perjury (affidavit in Clemency Papers Folder). It is recommended that the sentence be approved. The Sugamo Prison, Tokyo, Honshu, Japan, is the proper place of confinement.

7. Action

A form of action to carry this recommendation into effect is attached hereto.

/s/ Paul E. Spurlock
PAUL E. SPURLOCK
Reviewer
Judge Advocate Section

I CONCUR:

/s/ Allen R. Browne
ALLAN R. BROWNE
Lt. Col., JAGD
Army Judge Advocate

C O P Y

HEADQUARTERS EIGHTH ARMY
United States Army
APO 343

YOKOHAMA, JAPAN
June 1946

In the foregoing case of Ryoichi Shimode, the sentence is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu, Japan, is designated as the place of confinement, or elsewhere as the Supreme Commander for the Allied Powers, or other proper authority, may direct.

/s/ R. L. Eichelberger
R. L. EICHELBERGER
Lieutenant General, U.S. Army
Commanding

CERTIFIED TRUE COPY:
